

HOUSE BILL 2365

By Stewart

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 17, Part 13, relative to the sale or transfer
of certain firearms.

WHEREAS, there is broad consensus that felons, persons convicted of domestic violence crimes, and persons dangerously mentally ill as determined by a court should not be eligible to possess firearms for public safety reasons. Criminal and public safety background checks are an effective and easy mechanism to ensure that firearms are not purchased by or transferred to those who are prohibited from possessing them. Criminal and public safety background checks also reduce illegal gun trafficking. Because Tennessee's current background check requirements apply only to sales or transfers by licensed firearms dealers, many firearms are sold or transferred without a criminal and public safety background check, allowing criminals and dangerously mentally ill individuals to gain access to firearms; and

WHEREAS, conducting criminal and public safety background checks will help ensure that all persons buying firearms are legally eligible to do so. The General Assembly finds that it is in the public interest to strengthen our background check system by extending the requirement for a background check to apply to all gun sales and transfers in the state, except as permitted by this Act. Conducting criminal and public safety background checks will help ensure that all persons buying guns are legally eligible to do so. The people find that it is in the public interest to strengthen our background check system by extending the requirement for a background check to apply to all gun sales and transfers in the state, except as permitted herein. To encourage compliance with background check requirements, the sales tax imposed by title 67, chapter 6, will not apply to the sale or transfer of any firearms between two (2)

unlicensed persons if the unlicensed persons have complied with all background check requirements; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, Part 13, is amended by adding the following as a new section:

(a) As used in this section:

(1) "Gun dealer" means a person engaged in the business, as defined in 18 U.S.C. § 921, of selling, leasing, or otherwise transferring a firearm, whether the person is a retail dealer, pawnbroker, or otherwise; and

(2) "Immediate family members" mean spouses, domestic partners, parents, children, siblings, grandparents, grandchildren, nieces, nephews, first cousins, aunts, and uncles.

(b) All firearm sales or transfers, in whole or part in this state including, without limitation, a sale or transfer where either the purchaser, seller, transferee, or transferor is in Tennessee, shall be subject to background checks unless specifically exempted by state or federal law. The background check requirement applies to all sales or transfers made by a licensed gun dealer who shall use the procedure established in § 39-17-1316, as well as sales and transfers at a gun show, online, or between persons who are not licensed gun dealers.

(c) No person shall sell or transfer a firearm unless:

- (1) The person is a licensed gun dealer;
- (2) The purchaser or transferee is a licensed dealer; or
- (3) The requirements of subsection (d) are met.

(d) Where neither party to a prospective firearms transaction is a licensed gun dealer, the parties to the transaction shall complete the sale or transfer through a licensed gun dealer as follows:

(1) The seller or transferor shall deliver the firearm to a licensed gun dealer to process the sale or transfer as if the dealer is selling or transferring the

firearm from the dealer's inventory to the purchaser or transferee, except that the unlicensed seller or transferor may remove the firearm from the business premises of the licensed gun dealer while the background check is being conducted. If the seller or transferor removes the firearm from the business premises of the licensed gun dealer while the background check is being conducted, the purchaser or transferee and the seller or transferor shall return to the business premises of the licensed gun dealer, and the seller or transferor shall again deliver the firearm to the licensed gun dealer prior to completing the sale or transfer;

(2) Except as provided in subdivision (c)(1), the licensed gun dealer shall comply with all requirements of federal and state law that would apply if the licensed gun dealer were selling or transferring the firearm from the dealer's inventory to the purchaser or transferee, including conducting a background check on the prospective purchaser or transferee in accordance with federal and state law requirements and fulfilling all federal and state recordkeeping requirements;

(3) The purchaser or transferee shall complete, sign, and submit all federal, state, and local forms necessary to process the required background check to the licensed gun dealer conducting the background check.

(4) If the results of the background check indicate that the purchaser or transferee is ineligible to possess a firearm, then the licensed gun dealer shall return the firearm to the seller or transferor; and

(5) The licensed gun dealer may charge a fee that reflects the fair market value of the administrative costs and efforts incurred by the licensed gun dealer for facilitating the sale or transfer of the firearm.

(e) This section does not apply to:

(1) A transfer between immediate family members that is a bona fide gift;

(2) The sale or transfer of an antique firearm as defined in 18 U.S.C. § 921;

(3) A temporary transfer of possession of a firearm if the transfer is necessary to prevent imminent death or serious bodily harm to the person to whom the firearm is transferred if:

(A) The temporary transfer only lasts as long as immediately necessary to prevent such imminent death or serious bodily harm; and

(B) The person to whom the firearm is transferred is not prohibited from possessing firearms under state or federal law;

(4) Any law enforcement agency or the department of correction and, to the extent the person is acting within the course and scope of the person's employment or official duties, any law enforcement or correctional officer, United States marshal, member of the armed forces of the United States, national guard, or federal official;

(5) A federally licensed gunsmith who receives a firearm solely for the purposes of service or repair, or the return of the firearm to its owner by the federally licensed gunsmith;

(6) The temporary transfer of a firearm if the:

(A) Transfer is between spouses or domestic partners;

(B) Transfer is made for the purpose of the transferee storing the firearm at all times at an established shooting range authorized by the governing body of the jurisdiction in which the range is located, and the firearm is kept at the established range at all times;

(C) Transferee's possession of the firearm is exclusively at a lawfully organized competition involving the use of a firearm, or while participating in or practicing for a performance by an organized group that uses firearms as a part of the performance;

(D) Transferee is under eighteen (18) years of age and the transfer is made for lawful hunting, sporting, or educational purposes while under the direct supervision and control of a responsible adult who is not prohibited from possessing firearms; or

(E) Transferee is hunting, if the hunting is legal in all places where the person to whom the firearm is transferred possesses the firearm, and the person to whom the firearm is transferred has completed all training and holds all licenses or permits required for such hunting; or

(7) A person who:

(A) Acquired a firearm other than a handgun by operation of law upon the death of the former owner of the firearm; or

(B) Acquired a handgun by operation of law upon the death of the former owner of the handgun within the preceding sixty (60) days. At the end of the sixty-day period, the person shall either have lawfully transferred the handgun or shall have contacted the department of safety to notify the department that the person has possession of the handgun and intends to retain possession of the handgun, in compliance with all federal and state laws.

(f) No transfer, temporary or otherwise, of a firearm pursuant to subsection (e) shall be valid if the person to whom it is transferred is prohibited from possessing a firearm under federal or state law.

(g) If neither party to a prospective firearms transaction is a licensed gun dealer, and the parties to the transaction complete the sale or transfer through a licensed gun dealer as provided in this section, the sales tax imposed by title 67, chapter 6 shall not be applicable to that transaction.

SECTION 2. This act shall take effect on July 1, 2016, the public welfare requiring it, and shall apply to all firearms transactions covered by this act occurring on or after that date.